

UNITED STATES OF AMERICA
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DAVID ANGEL SIFUENTES,

Petitioner,

Case No. 1:03-cv-637

v.

Honorable Richard Alan Enslen

JOHN PRELESNIK,

Respondent.

ORDER

This is a habeas corpus action brought by a state prisoner pursuant to 28 U.S.C. § 2254. Petitioner is serving a term of 5 to 15 years, imposed by the Midland County Circuit Court on November 9, 2000, after a jury convicted Petitioner of third-degree criminal sexual conduct, MICH. COMP. LAWS § 750.520d(1)(b), and furnishing alcohol to a minor, MICH. COMP. LAWS § 436.1701(1). Petitioner raised two grounds for habeas corpus relief. On May 24, 2006, the Magistrate Judge issued a report and recommendation to deny the petition. Petitioner filed objections (Dkt. No. 47) and moved to amend the petition (Dkt. No. 46). In a final order issued on August 11, 2006, this Court granted Petitioner's motion to amend, denied his objections to the report and recommendation, dismissed the petition with prejudice and denied Petitioner a certificate of appealability.

Since his petition was dismissed, Petitioner has filed a barrage of motions and other documents. He filed a motion to alter or amend judgment pursuant to FED. R. CIV. P. 59 (Dkt. No. 51) and supplement (Dkt. No. 53), which was denied by the Court's opinion and order issued on October 2, 2006 (Dkt. Nos. 56-57). Petitioner then filed two motions for reconsideration (Dkt. Nos. 58, 61) and a supplement (Dkt. No. 62), which were denied by order entered on December 11, 2006 (Dkt. No. 64). Petitioner filed a notice of appeal (Dkt. No. 60) on October 27, 2006. Petitioner

subsequently filed a motion for relief from judgment pursuant to FED. R. CIV. P. 60(b) (Dkt. No. 65). On January 26, 2007, the Court denied the motion without prejudice because the Court did not have proper jurisdiction over the motion as it was filed after Petitioner filed his notice of appeal (Dkt. No. 71).

On March 26, 2007, Petitioner filed the following documents: “Notice to Court and Praeceptum” (Dkt. No. 73); “Affidavit/Motion for Leave to Proceed *In Forma Pauperis* on Appeal in Article III Court” (Dkt. No. 74); “Affidavit of Declaration Truth in Regards to Sovereignty and Commercial Law” (Dkt. No. 75); “Petitioner’s Request for Documents” (Dkt. No. 76); “Petitioner’s Motion for Remand to have Motion and Supplemental Motion under Rule 60 Considered on the Merits . . .” (Dkt. No. 77); “Formal Sovereign Oath of Renunciation” (Dkt. No. 78); “General Plea/Enactment of Article III Court” (Dkt. No. 79); “Bond” (Dkt. No. 80); “Waiver of Protest” (Dkt. No. 81); and “Declaration and Certificate of Sovereign Status” (Dkt. No. 82). A majority of the documents filed by Petitioner do not warrant review by the Court. However, the Court will briefly address Petitioner’s Motion for Leave to Proceed *in Forma Pauperis* on Appeal (Dkt. No. 74), Request for Documents (Dkt. No. 76) and Motion for Remand (Dkt. No. 77).

The Court denied Petitioner leave to proceed *in forma pauperis* in a previous order issued on December 11, 2006 (Dkt. No. 64); therefore, his Motion for Leave to Proceed *in Forma Pauperis* on Appeal will be denied.¹

In his Request for Documents, Plaintiff asks for a copy of the following documents that he filed in this case: (1) Petitioner’s supplemental motion in support of his motion to alter or amend judgment (Dkt. No. 53); (2) Petitioner’s motion for relief from judgment, affidavit of truth and proof of service (Dkt. Nos. 65-67); Affidavit and Certificate of Prisoner Institutional/Trust Fund

¹On March 5, 2007, the Court issued an order notifying Petitioner of his deficiency on appeal. That order was issued in error as the Court already had denied Petitioner leave to proceed *in forma pauperis* on appeal.

Activity dated November 14, 2006 (Dkt. No. 63); and Affidavit and Certificate of Prisoner Institutional/Trust Fund Activity dated March 9, 2007 (Dkt. No. 74). Petitioner asserts that he needs the documents in order to prepare his appeal. Petitioner claims that, through no fault of his own, the documents were thrown away, stolen, or he did not have sufficient funds to make copies before sending the documents to the Court. The Court will grant Petitioner's request and provide him with copies of the documents listed above free of charge. However, Petitioner will be required to pay the regular rate of \$.50 per page for any future copy requests.

Petitioner also moves for a remand to this Court for consideration of his motion for relief from judgment. In support of his motion, Petitioner cites *Carriger v. Lewis*, 971 F.2d 329 (9th Cir. 1992). In that habeas action, the petitioner asked the Sixth Circuit to remand his appeal to the district court so that he could file a FED. R. CIV. P. 60(b) motion regarding newly discovered evidence. The Sixth Circuit denied his request and informed him that he must first "show that the district court has indicated a willingness to consider the new evidence." *Id.* at 331. The Sixth Circuit granted leave to renew the motion for remand upon satisfaction of this requirement. *Id.* Under *Carriger*, Petitioner must make his motion to remand in the Sixth Circuit, not in this Court. Moreover, the Sixth Circuit is unlikely to grant a motion to remand because this Court is not willing to consider Petitioner's motion for relief from judgment on remand because it already has decided a motion to alter or amend judgment and two motions for reconsideration regarding its order dismissing Petitioner's application for habeas corpus relief. Therefore:

IT IS HEREBY ORDERED that Petitioner's motion for leave to proceed *in forma pauperis* on appeal (Dkt. No. 74) is **DENIED**.

IT IS FURTHER ORDERED that "Petitioner's Request for Documents" (Dkt. No. 76) is **GRANTED**. The Clerk of the Court is directed to mail Petitioner a copy of the following documents: (1) Petitioner's supplemental motion in support of his motion to alter or amend

judgment (Dkt. No. 53); (2) Petitioner's motion for relief from judgment, affidavit of truth and proof of service (Dkt. Nos. 65-67); (3) Affidavit and Certificate of Prisoner Institutional/Trust Fund Activity dated November 14, 2006 (Dkt. No. 63); and (4) Affidavit and Certificate of Prisoner Institutional/Trust Fund Activity dated March 9, 2007 (Dkt. No. 74). **Petitioner will be required to pay the regular rate of \$.50 per page for any future copy requests.**

IT IS FURTHER ORDERED that "Petitioner's Motion for Remand to have Motion and Supplemental Motion under Rule 60 Considered on the Merits . . ." (Dkt. No. 77) is **DENIED**.

DATED in Kalamazoo, MI:
October 1, 2007

/s/ Richard Alan Enslen
RICHARD ALAN ENSLEN
SENIOR UNITED STATES DISTRICT JUDGE